Child Right of Education under International Law: A Special Reference to Indian Education System

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Abstract

The issue of RTE implementation under international human rights law is firmly rooted in practically every corner of the globe, especially in emerging and underdeveloped countries. Due to the nature of soft law, imprecise terminology, and fragmentation within provisions of international and regional legal instruments, the issue has several facets, ranging from discrimination to the question of free and compulsory quality education for all. In the case of India Article 21(A) was enacted in 2002 as part of the 86th Amendment Act. It included primary education in the right to freedom, stating that the state would provide free and compulsory education to children aged six to fourteen. The Union Cabinet approved the Right to Education Bill in 2008, six years after the Indian Constitution was amended. Under Article 21A of the Indian Constitution, the Right of Children to Free and Compulsory Education Act, or Right to Education Act (RTE), which was passed by the Indian parliament on August 4, 2009, defines the mechanisms of providing free and compulsory education for children aged 6 to 14. India was one of 135 countries to join the group. The present study employs the doctrinal method of research with a qualitative approach to examine the education system and legal frame of India under the domain of International law.

Keywords: the right to education, Education system, Right to education under Human rights

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1.0 INTRODUCTION

Children's rights are a subset of human rights with particular attention to the rights of special protection and care afforded to minors.[2] The 1989 Convention on the Rights of the Child (CRC) defines a child as "any human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier."[3] Children's rights include their right to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and criminal laws appropriate for the age and development of the child, equal protection of the child's civil rights, and freedom from discrimination on the basis of the child's race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally, and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. Other definitions include the rights to care and nurturing.[4] There is a mass of human rights law, both treaty and 'soft law', both general and child-specific, which recognizes the distinct status and particular requirements of children. Children, owing to their particular vulnerability and their significance as the future generation, are entitled to special treatment generally, and, in situations of danger, to priority in the receipt of assistance and protection.[5]

There are no definitions of other terms used to describe young people such as "adolescents", "teenagers", or "youth" in international law,[6] but the children's rights movement is considered distinct from the youth rights movement.[7]

The field of children's rights spans the fields of law, politics, religion, and morality. Governments must provide good quality education and make sure all children can access it, without discrimination. This is an international legal obligation and governments can be held accountable for failing to provide

[2] "Children's Rights" Archived 2008-09-21 at the Wayback Machine, Amnesty International

[3] Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N..

[4] Bandman, B. (1999) Children's Right to Freedom, Care, and Enlightenment. Routledge, p 67.

[5] Jenny Kuper, International law concerning child civilians in armed conflict (1997, Clarendon Press)

[6] "Children and youth", Human Rights Education Association.

[7] Sayed Qudrat Hashimy, *India is an Incredible Place for Education: A Cursory Glance*, FIGSHARE 1 (2022).

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education for all their citizens. Education has been recorded as a basic human right in international instruments since 1948. It is included in many documents and treaties including:

- Universal Declaration of Human Rights (1948)[8]
- Convention Against Discrimination in Education (1960)[9]
- International Covenant on Economic, Social and Cultural Rights (1966)[10]
- Convention on the Elimination of All Forms of Discrimination against Women (1979)[11]
- African Charter on Human and People's Rights (1986)[12]
- Convention on the Rights of the Child (1989)[13]
- World Declaration on Education for All: Meeting Basic Learning Needs (1990)[14]
- The Dakar Framework for Action: Education for All (2000)[15]
- Convention on the Rights of Persons with Disabilities (2006)[16]

The UN General Assembly Resolution on the Right to Education in Emergency Situations (2010)[17] Governments must guarantee that education in their country Role of countries in meeting obligations concerning the Right to Education[18]

The international community knows that achieving the full extent of the right to education will take time and resources. Governments must put plans in place to meet the minimum standard of free, compulsory primary education and then take steps to extend the right to education to every child. The right to education without discrimination is part of the minimum standard and must be created immediately.

As minors by law, children do not have autonomy or the right to make decisions on their own for themselves in any known jurisdiction of the world. Instead their adult caregivers, including parents, social workers, teachers, youth workers, and others, are vested with that authority, depending on the circumstances.[19] Some believe that this state of affairs gives

[8] Universal Declaration of Human Rights (1948)
[9] Convention Against Discrimination in Education (1960)
[10] International Covenant on Economic, Social and Cultural Rights (1966)
[11] Convention on the Elimination of All Forms of Discrimination against Women (1979)
[12] African Charter on Human and People's Rights (1986)
[13] Convention on the Rights of the Child (1989)
[14] World Declaration on Education for All: Meeting Basic Learning Needs (1990)
[15] The Dakar Framework for Action: Education for All (2000)
[16] Convention on the Rights of Persons with Disabilities (2006)
[17] UN General Assembly Resolution on the Right to Education in Emergency Situations (2010)
[18] Sayed Qudrat Hashimy, *India is an Incredible Place for Education: A Cursory Glance* (2022), https://figshare.com/articles/journal_contribution/India_is_an_Incredible_Place_for_Education_A_Cursory_Glance/21706895/1 (last visited Jan 31, 2023).
[19] Lansdown, G. "Children's welfare and children's rights," in Hendrick, H. (2005) Child Welfare And Social Policy: An Essential Reader. The Policy Press. p. 117

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children insufficient control over their own lives and causes them to be vulnerable.[20] Louis Althusser has gone so far as to describe this legal machinery, as it applies to children, as "repressive state apparatuses".[21] Structures such as government policy have been held by some commentators to mask the ways adults abuse and exploit children, resulting in child poverty, lack of educational opportunities, and child labor. In this view, children are to be regarded as a minority group towards whom society needs to reconsider the way it behaves.[22]

Researchers have identified children as needing to be recognized as participants in a society whose rights and responsibilities need to be recognized at all ages.[23] Sir William Blackstone (1765-9) recognized three parental duties to the child: maintenance, protection, and education.[24] In modern language, the child has a right to receive these from the parent.[25]

The League of Nations adopted the Geneva Declaration of the Rights of the Child (1924), which enunciated the child's right to receive the requirements for normal development, the right of the hungry child to be fed, the right of the sick child to receive health care, the right of the backward child to be reclaimed, the right of orphans to shelter, and the right to protection from exploitation.[26]

The United Nations Universal Declaration of Human Rights (1948) in Article 25(2) recognized the need for motherhood and childhood to "special protection and assistance" and the right of all children to "social protection."[27]

The United Nations General Assembly adopted the United Nations Declaration of the Rights of the Child (1959), which enunciated ten principles for the protection of children's rights, including the universality of rights, the right to special protection, and the right to protection from discrimination, among other rights.[28]

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[20] Lansdown, G. (1994). "Children's rights," in B. Mayall (ed.) Children's childhood: Observed and experienced. London: The Falmer Press. p 33.

[21] Jenks, C. (1996) "Conceptual limitations," Childhood. New York: Routledge. p 43.

[22] Thorne, B (1987). "Re-Visioning Women and Social Change: Where Are the Children?". Gender & Society. 1 (1): 85–109

[23] Lansdown, G. (1994). "Children's rights," in B. Mayall (ed.) Children's childhood: Observed and experienced. London: The Falmer Press. p 34.

[24] Blackstone's Commentaries on the Laws of England, Book One, Chapter Sixteen. (1765-1769).

[25] Hashimy, *supra* note 17 at 9.

[26] Geneva Declaration of the Rights of the Child of 1924, adopted Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924).

[27] Universal Declaration of Human Rights; 10 December 1948

[28] Declaration of the Rights of the Child, G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).

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Consensus on defining children's rights has become clearer in the last fifty years.[29] A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition".[30] According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children.[31]

Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services;[32] care and protection for children in state care; ensuring education for all children regardless of their race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics, and; health care and advocacy.[33]

1.1 CLASSIFICATION OF RIGHTS

Children have two types of human rights under international human rights law.[34] They have the same fundamental general human rights as adults, although some human rights, such as the right to marry, are dormant until they are of age, Secondly, they have special human rights that are necessary to protect them during their minority.[35] General rights operative in childhood includes the right to security of the person, freedom from inhuman, cruel, or degrading treatment, and the right to special protection during childhood.[36] Particular human rights of children include, among other rights, the right to life, the right to a name, the right to express his views in matters concerning the child, the right to freedom of thought, conscience, and religion, the right to health care, the right to protection from economic and sexual exploitation, and the right to education.[37]

Children's rights are defined in numerous ways, including a wide spectrum of civil, political, economic, social, and cultural rights. Rights tend to be of two general types: those

[29] Franklin, B. (2001) The new handbook of children's rights: comparative policy and practice. Routledge. p 19.

[30] Rodham, H (1973). "Children Under the Law". Harvard Educational Review. 43: 487–514.

[31] Mangold, S.V. (2002) "Transgressing the Border Between Protection and Empowerment for Domestic Violence Victims and Older Children: Empowerment as Protection in the Foster Care System," New England School of Law.

[32] Hashimy, *supra* note 17 at 5.

[33] Ahearn, D., Holzer, B. with Andrews, L. (2000, 2007) Children's Rights Law: A Career Guide. Harvard Law School.

[34] Markus Kaltenborn, Markus Krajewski and Heike Kuhn (2019), Sustainable Development Goals and Human Rights, Springer (28 November 2019), ASIN : B0824MMBF6

[35] UNICEF, Convention on the Rights of the Child

[36] International Covenant on Civil and Political Rights

[37] Supra note 2

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advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency. These have been labeled as the right of empowerment and as the right to protection.[38]

United Nations educational guides for children classify the rights outlined in the Convention on the Rights of the Child as the "3 Ps": Provision, Protection, and Participation.[39] They may be elaborated as follows:

- **Provision:** Children have the right to an adequate standard of living, health care, education and services, and to play and recreation. These include a balanced diet, a warm bed to sleep in, and access to schooling.
- **Protection:** Children have the right to protection from abuse, neglect, exploitation, and discrimination. This includes the right to safe places for children to play; constructive child-rearing behavior, and acknowledgment of the evolving capacities of children.
- **Participation:** Children have the right to participate in communities and have programs and services for themselves. This includes children's involvement in libraries and community programs, youth voice activities, and involving children as decision-makers.[40]

Similarly, the Child Rights International Network (CRIN) categorizes rights into two groups:[41]

- Economic, social, and cultural rights, are related to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. Included are rights to education, adequate housing, food, and water, the highest attainable standard of health, the right to work and rights at work, as well as the cultural rights of minorities and indigenous peoples.[42]
- Environmental, cultural, and developmental rights, which are sometimes called "third-generation rights," and including the right to live in safe and healthy environments and that groups of people have the right to cultural, political, and economic development.

Amnesty International openly advocates four particular children's rights, including the end to juvenile incarceration without parole, an end to the recruitment of military use of children, ending the death penalty for people under 21, and raising awareness of human rights in the classroom.[43] Human Rights Watch, an international advocacy organization, includes child

[38] Supra note 16

[39] Young-Bruehl, Elisabeth (2012). Childism: Confronting Prejudice Against Children. New Haven, Connecticut: Yale University Press. p. 10. ISBN 978-0-300-17311-6.

[40] (1997) "Children's rights in the Canadian context", Interchange. 8(1–2). Springer.

[41] "A-Z of Children's Rights", Children's Rights Information Network

[42] Hashimy, *supra* note 17 at 4.

[43] Supra note 1

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labor, juvenile justice, orphans and abandoned children, refugees, street children, and corporal punishment[44].

The scholarly study generally focuses on children's rights by identifying individual rights. The following rights "allow children to grow up healthy and free":[45]

- Freedom of speech
- Freedom of thought
- Freedom from fear
- Freedom of choice and the right to make decisions
- Ownership over one's body

1.2 PHYSICAL RIGHTS

A report by the Committee on Social Affairs, Health, and Sustainable Development of the Parliamentary Assembly of the Council of Europe identified several areas the Committee was concerned about, including procedures such as "female genital mutilation, the circumcision of young boys for religious reasons, early childhood medical interventions in the case of intersex children and the submission to or coercion of children into piercings, tattoos or plastic surgery".[46] The Assembly adopted a non-binding resolution in 2013 that calls on its 47 member-states to take numerous actions to promote the physical integrity of children.[47]

Article 19 of the Convention on the Rights of the Child enjoins parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation".[48] The Committee on the Rights of the Child interprets article 19 as prohibiting corporal punishment, commenting on the "obligation of all States Party to move quickly to prohibit and eliminate all corporal punishment."[49] The United Nations Human Rights Committee has also interpreted Article 7 of the International Covenant on Civil and Political

[44] Myneni S.R. (2012), Human Rights Law, Asia Law House (1 January 2012), ISBN-10 : 9381849226, ISBN-13 : 978-9381849224

[45] Calkins, C.F. (1972) "Reviewed Work: Children's Rights: Toward the Liberation of the Child by Paul Adams", Peabody Journal of Education. 49(4). p. 327.

[46] Committee on Social Affairs, Health and Sustainable Development. Children's Right to Physical Integrity, Doc. 13297. Parliamentary Assembly of the Council of Europe, 6 September 2013.

[47] Parliamentary Assembly of the Council of Europe. Children's Right to Physical Integrity, Resolution 1952., Adopted at Strasbourg, Tuesday, 1 October 2013.

[48] UN (2012). 11. Convention on the Rights of the Child Archived 2014-02-11 at the Wayback Machine. United Nations Treaty Collection.

[49] UN Committee on the Rights of the Child (2006) "General Comment No. 8:" par. 3.

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Rights prohibiting "cruel, inhuman or degrading treatment or punishment" to extend to children, including corporal punishment of children.[50]

Newell (1993) argued that "...pressure for protection of children's physical integrity should be an integral part of pressure for all children's rights."[51] The Committee on Bioethics of the American Academy of Pediatrics (AAP) (1997), citing the Convention on the Rights of the Child (1989), asserts that "every child should have the opportunity to grow and develop free from preventable illness or injury."[52] Other issues affecting children's rights include the military use of children, the sale of children, child prostitution, and child pornography.

1.3 DIFFERENCE BETWEEN CHILDREN'S RIGHTS AND YOUTH RIGHTS

"In the majority of jurisdictions, for instance, children are not allowed to vote, to marry, to buy alcohol, to have sex, or to engage in paid employment."[53] Within the youth rights movement, it is believed that the key difference between children's rights and youth rights is that children's rights supporters generally advocate the establishment and enforcement of protection for children and youths, while youth rights (a far smaller movement) generally advocates the expansion of freedom for children and/or youths and rights such as suffrage.

2.0 INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights is seen as a basis for all international legal standards for children's rights today.[54] Several conventions and laws address children's rights around the world. Several current and historical documents affect those rights, including the Declaration of the Rights of the Child,[55] drafted by Eglantyne Jebb in 1923, endorsed by the League of Nations in 1924, and reaffirmed in 1934. A slightly expanded version was adopted by the United Nations in 1946, followed by a much-expanded version adopted by the General Assembly in 1959. It later served as the basis for the Convention on the Rights of the Child.

3.0 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The United Nations adopted the International Covenant on Civil and Political Rights (ICCPR) in 1966. The ICCPR is a multilateral international covenant that has been ratified or acceded to by nearly all nations on Earth. Nations that have become state parties to the Covenant are required to honor and enforce the rights enunciated by the Covenant. The treaty came into

[50] UN Human Rights Committee (1992) "General Comment No. 20". HRI/GEN/1/Rev.4.: p. 108

[51] Newell P. The child's right to physical integrity. Int'l J Child Rts. 1993;1:101 et seq.

[52]Committee on Bioethics. Religious objections to medical care.. Pediatrics..

[53] "Children's Rights", Stanford Encyclopedia of Philosophy.

[54] Sayed Qudrat Hashimy, *Cultural Horizon of Indian Foreign Policy: A Cursory Glance on ICCR*, 1 SSRN ELECTRON. J. 1 (2022).

[55] Supra note 11

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effect on 23 March 1976. The rights codified by the ICCPR are universal, so they apply to everyone without exception and this includes children. Although children have all rights, some rights such as the right to marry and the right to vote come into effect only after the child reaches maturity.[56]

Some general rights applicable to children include:[57]

- the right to life
- the right to security of person
- the right to freedom from torture
- the right to freedom from cruel, inhuman, or degrading treatment or punishment
- the right to be separated from adults when charged with a crime, the right to speedy adjudication, and the right to be accorded treatment appropriate to their age[58]

Article 24 codifies the right of the child to special protection due to his minority, the right to a name, and the right to a nationality.[59]

4.0 CONVENTION ON THE RIGHTS OF THE CHILD

The United Nations' 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political, and social rights. Its implementation is monitored by the Committee on the Rights of the Child. National governments that ratify it commit themselves to protect and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community.[60] The CRC is the most widely ratified human rights treaty with 196 ratifications; the United States is the only country not to have ratified it.[61]

The CRC is based on four core principles: the principle of non-discrimination; the best interests of the child; the right to life, survival, and development; and considering the views of the child in decisions that affect them, according to their age and maturity.[62] The CRC, along with international criminal accountability mechanisms such as the International Criminal Court, the Yugoslavia and Rwanda Tribunals, and the Special Court for Sierra Leone, is said to have significantly increased the profile of children's rights worldwide.[63]

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[56] Supra note 19

[57] Hashimy, *supra* note 53 at 3.

[58] Ibid

[59] Ibid

[60] Convention on the Rights of the Child, UNICEF

[61] UN (2018). "United Nations Treaty Collection"

[62] Supra note 61

[63] Arts, K, Popvoski, V, et al. (2006) International Criminal Accountability and the Rights of Children. "From Peace to Justice Series". London: Cambridge University Press. .

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4.1 VIENNA DECLARATION AND PROGRAMME OF ACTION

The Vienna Declaration and Programme of Action urge, in Section II para 47, all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action and calls on States to integrate the Convention on the Rights of the Child into their national action plans. Employing these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates, and providing access to safe drinking water and basic education. Whenever so-called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty. Further, para 48 urges all states, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labor, the sale of children and organs, child prostitution, child pornography, and other forms of sexual abuse.[64] This influenced the adoption of the Optional Protocol on the Involvement of Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.

ENFORCEMENT

A variety of enforcement organizations and mechanisms exist to ensure children's rights. They include the Child Rights Caucus for the United Nations General Assembly Special Session on Children. It was set up to promote full implementation and compliance with the Convention on the Rights of the Child, and to ensure that child rights were given priority during the UN General Assembly Special Session on Children and its Preparatory process. The United Nations Human Rights Council was created "with the hope that it could be more objective, credible and efficient in denouncing human rights violations worldwide than the highly politicized Commission on Human Rights."[65] The NGO Group for the Convention on the Rights of the Child is a coalition of international non-governmental organizations originally formed in 1983 to facilitate the implementation of the United Nations Convention on the Rights of the Child.

[64] Vienna Declaration and Programme of Action. Section II, para 46 & 47

[65] Hashimy, *supra* note 53 at 6.

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5.0 INDIAN PERSPECTIVES ON CHILDREN'S RIGHTS

A child means every human being below the age of eighteen years unless, under the law applicable to the child, the age of majority is attained earlier.[66] A nation's children are a "supremely important national asset", and the future well-being of a nation depends upon how its children grow and develop.[67] The state must look after a child (or "intending to") ensuring the full development of its personality.[68] To achieve this goal, a state must grant certain rights to the children. In India, the rights of citizens including that of children have been directly or indirectly provided for by the Constitution of India. The United Nations Conventions on Rights of the Child (CRC), 1989 is important concerning the rights of the child to which India is a signatory.[69]

Adopted by the United Nations in 1989, the CRC is an international agreement legally binding on the parties signatory to it. It has incorporated in its various articles the rights of children without any discrimination whatsoever. It was ratified by India on 11 December 1992. It has a preamble setting out different principles the CRC is built upon.

It is based on four basic principles:

1. Non-discrimination (Article 2)[70]
2. Best Interest of the Child (Article 3)[71]
3. Right to Life Survival and Development (Article 6)[72]
4. Right to be Heard (Article 12)[73]

PART I (Article 1-41): It sets out the rights of children and obligations of governments. The rights can further be categorized as:

- **Survival Rights**: the right to life of a child and access to necessities to existence such as adequate food, shelter, the standard of living, and medical requirements.
- **Development Rights**: the right to education, to practice the religion of own choice and cultural activities, freedom of thought and conscience, to play and leisure, and access to information.

[66] Article 1 of the United Nations Convention on Rights of the Child, 1989
[67] Laxmikant Pandey v. Union of India, [1984] 2 SCR 795
[68] Sheela Barse and Ors. v. Union of India and Ors. JT [1986] 136 1986 SCALE (2)230
[69] Agarwal H.O. (2018), International Law and Human Rights, Central Law Publications, Edition: 22, 2018
[70] Article 2 of Conventions on Rights of the Child (CRC)
[71] Article 3 of Conventions on Rights of the Child (CRC)
[72] Article 6 of Conventions on Rights of the Child (CRC)
[73] Article 12 of Conventions on Rights of the Child (CRC)

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- **Protection Rights**: rights that protect children from abuses that may be consequential to several kinds of circumstances, such as children subject to procedures of the criminal justice system, children in employment, children who are refugees, and children who have undergone abuse or exploitation.
- **Participation Rights**: the rights of children to participate in activities of the society, especially matters that may affect their lives, to assemble peacefully, and to join associations.[74]

PART II (Article 42-45): It contains provisions regarding the implementation of the provisions of the CRC.

PART III (Articles 46-54): It includes provisions for signing the convention by parties and rules and procedures thereafter for ratification, enforceability, amendment, denouncement, etc. of the convention.

Three Optional Protocols to the CRC have been introduced which are:

- Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography.
- Optional Protocol to CRC on the involvement of Children in Armed Conflict.
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

As of now, India has not signed the third optional protocol.

6.0 INDIAN CONSTITUTION AND CHILD RIGHT OF EDUCATION.

The Constitution in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees under the articles mentioned below, rights to the children of India:

- **Article 14:** Citizens of India, including children, must be treated equally before the law and must be given equal protection by the law without any discrimination or arbitrariness.
- **Article 15(3):** Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit.

[74] Hashimy, *supra* note 53 at 9.

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- **Article 21:** No person shall be deprived of his life or personal liberty without due process of law. A person has the right to adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.[75]
- **Article 21A**: The State shall provide free and compulsory education to all the children falling in the age group of six to fourteen years in such manner as the State may, by law, determine.
- **Article 23:** Prohibits trafficking in human beings and beggars or any other form of forced labor.
- **Article 24:** Prohibits employment of children under the age of fourteen years in a factory, mine, or in any other hazardous employment.
  - **Article 39(e):** The state shall thrive to ensure that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
  - **Article 39(f):** The state shall ensure children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity. It must also be ensured that childhood and youth are protected against exploitation and moral and material abandonment.
  - **Article 41:** The state is obliged to, within its economic capacity and development, secure provisions for educational opportunities and facilities.
  - **Article 44:** The state shall make all possible efforts to secure a Uniform Civil Code for all the citizens, thereby implying a uniform code for the adoption of children.
  - **Article 45:** The state shall endeavor to provide free and compulsory education to children until they attain the age of fourteen years.
- **Article 46:** The state must promote the educational and economic interests of weaker sections of the society with special care and therefore, the children therein.
- **Article 47:** The state is duty-bound to raise the level of nutrition and the standard of living and to improve public health, including that of children.
- **Article 51 (c):** International laws and treaties shall be respected by the state to every possible extent, including the CRC and its optional protocols, Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and Optional Protocol to CRC on the Involvement of Children in Armed Conflict.

[75] Ashok (Dr.) v. Union of India AIR 1997 SC 2298

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- **Article 51 A (k):** It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.
- **Article 243G** provides for the institutionalization of child care by seeking to entrust programs of Women and Child Development to Panchayat (Item 25 of Schedule 11).

6.1 RIGHT TO CONSTITUTIONAL REMEDIES WHEN RIGHTS OF CHILDREN ARE INFRINGED

If the above-mentioned fundamental rights are infringed, the appropriate courts may be approached. The constitution has provisions for constitutional remedies in articles 32 and article 226.

i. **Article 32:** A person has the right to move to the Supreme Court to protect his fundamental rights. It is also a fundamental right.

ii. **Article 226:** A person may approach High Court by this article to get his rights protected, not necessarily fundamental rights.

The courts, to protect the rights they are authorized to, may issue writs:

iii. **Habeas Corpus:** translating to "you may have the body", a person, whether or not a child, who is detained, whether in prison or privately, is directed to be produced before the court. If found that such detention was illegal, he is released.

iv. **Mandamus**: meaning 'we command', mandamus issued by Supreme Court or High Court orders the lower courts/tribunals/public authorities to perform a public or statutory duty which they are obliged to perform but have failed to do so.

v. **Prohibition**: it is issued by the Supreme Court or the High Courts, to prohibit inferior courts under them from transgressing the limits or powers vested in them.

vi. **Certiorari**: it enables a superior court to quash an order already passed by the inferior court/tribunal/quasi-judicial authority.

vii. **Quo warranto**: it means by what right. It is issued to restrain a person from holding a public office he is not entitled to hold.

viii. **Public Interest Litigation** may be filed in the Supreme Court or the High Courts by a public-spirited individual or a non-governmental organization against the Central Government or State Government or any of their respective agencies by the virtue of A.32 and A.226 for protection of the rights of the Children.

6.2 CHILDREN'S RIGHT TO EDUCATION

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Children's rights education is the teaching and practice of children's rights in schools, educational programs, or institutions, as informed by and consistent with the United Nations Convention on the Rights of the Child. When fully implemented, a children's rights education program consists of both a curriculum to teach children their human rights, and a framework to operate the school in a manner that respects children's rights. Articles 29 and 42 of the Convention on the Rights of the Child require children to be educated about their rights.

In addition to meeting the legal obligations of the Convention to spread awareness of children's rights to children and adults, teaching children about their rights has the benefits of improving their awareness of rights in general, making them more respectful of other people's rights, and empowering them to take action in support of other people's rights. Early programs to teach children about their rights, in Belgium, Canada, England, and New Zealand have provided evidence of this.[76,77,78,79,80,81,82] Children's rights in schools were taught and practiced as an ethos of 'liberating the child' well before the UN Convention was written, and this practice helped to inform the values and philosophy of the Convention, the IBE, and UNESCO, though sadly these practices, and this history are not acknowledged or built-upon by the UN. This is one reason that children's rights have not become a foundation of schools despite 100 years of struggle.[83]

6.3 CHILDREN'S RIGHTS EDUCATION UNDER HUMAN RIGHTS INSTRUMENTS

Children's human rights education refers to education and educational practices in schools and educational institutions that are consistent with the United Nations Convention on the Rights

[76] Covell, K., and Howe, R.B. (1999). "The Impact of Children's Rights Education: A Canadian study." International Journal of Children's Rights, 7, 171-183.

[77] Covell, K., and Howe, R.B. (2001). "Moral Education through the 3 Rs: Rights, Respect and Responsibility." Journal of Moral Education, 30, 31-42

[78] Covell, K., Howe, R.B., and McNeil, J.K. (2008). "'If there's a dead rat, don't leave it.' Young children's understanding of their citizenship rights and responsibilities." Cambridge Journal of Education, 38 (3), 321-339.

[79] Howe, R.B. and Covell, K. (2007). Empowering Children: Children's Rights Education as a Pathway to Citizenship. Toronto: University of Toronto Press

[80] DeCoene, J., and De Cock, R. (1996). "The Children's Rights Project in the Primary School 'De vrijdagmarkt' in Bruges. In E. Verhellen (Ed.), Monitoring children's rights. (pp. 627-636). The Hague: Martinus Nijhoff

[81] Wallberg, P., and Kahn, M. (2011). "The Rights Project: How rights education transformed a classroom." Canadian Children, 36 (1), 31-35

[82] Covell, K., McNeil, J.K, and Howe, R.B. (2009). "Reducing teacher burnout by increasing student engagement." School Psychology International, 30 (3), 282-290.

[83] Newman, Michael (2015) Children's Rights in our Schools – the movement to liberate the child, an introduction to the New Ideals in Education Conferences 1914-1937

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of the Child.[84,85,86] It is a form of education that takes seriously the view that children are bearers of human rights, that children are citizens in their own right, and that schools and educational institutions are learning communities where children learn (or fail to learn) the values and practices of human rights and citizenship, and that educating children about their basic human rights is a legal obligation of the United Nations Convention on the Rights of the Child.

Children's rights education is education where the rights of the child, as described in the Convention, are taught and practiced in individual classrooms. But in its most developed form, children's rights are taught and practiced systematically and comprehensively across grade levels, the school, and school districts. With full-blown children's rights to education, children's rights are not simply an addition to a particular subject or classroom. Rather, the rights of the child are incorporated into the school curricula, teaching practices, and teaching materials across subjects and grade levels and are the centerpieces of school mission statements, behavior codes, and school policies and practices.[87]

Fully developed children's rights education means that all members of the school community receive education on the rights of the child. The Convention serves as a values framework for the life and functioning of the school or educational institution and for efforts to promote a more positive school climate and school culture for learning.

A core belief in children's rights education is that when children learn about their basic human rights, this learning serves as an important foundation for their understanding and support of human rights more broadly.

6.4 EDUCATION AND THE UN CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the child has important implications for the education of children. Approved by the United Nations in 1989, the Convention is the most widely ratified and most quickly ratified country in world history. Only two countries – the United

[84] Supra note 82

[85] Krappman, L. (2006). "The rights of the child as a challenge to human rights education." Journal of Social Science Education.

[86] Osler, A., and Starkey, H. (2006). "Education for democratic citizenship: A review of research, policy and practice 1995-2005." Research Papers in Education, 21 (4), 433-466.

[87] Covell, K., Howe, R.B., and McNeil, J.K. (2010). "Implementing children's human rights education in schools." Improving Schools, 13 (2), 117-132.

Electronic copy available at: https://ssrn.com/abstract=4221034

States and South Sudan – have yet to ratify the treaty.[88,89,90] By ratifying the Convention, countries commit themselves to the principle that children have fundamental rights as persons and that state authorities have obligations to provide for those rights.[91,92,93] Under the terms of the Convention, a legally binding treaty, states parties should make their laws, policies, and practices consistent with the provisions of the Convention, if not immediately, then over time. In the Convention are numerous articles that deal with education and with children's rights education. Eugene Verhellen has divided the Convention's provisions on education along three tracks.[94] First is the child's right to education on the basis of equal opportunity (article 28). This includes the right to free primary education and to accessible secondary and higher education. Second are the child's rights in education (articles 2, 12, 13, 14, 15, and 19). This includes the right to non-discrimination, participation, protection from abuse and violence, and freedom of thought, expression, and religion. Third are the child's rights through education (article 29 and 42). This refers to education where children are able to know and understand their rights and to develop respect for human rights, including their own human rights.

This third track of education spells an obligation by countries and education authorities to provide for children's human rights education. Article 29 of the Convention requires that 'the education of the child shall be directed to the development of respect for human rights and fundamental freedoms.' This presumes knowledge and understanding of rights. Article 42 requires that countries 'undertake to make the principles of the Convention widely known, by appropriate and active means, to adults and children alike.'

Mindful of this duty of disseminating knowledge and recognizing its importance, the UN Committee on the Rights of the Child, the UN body responsible for monitoring the implementation of the Convention, has repeatedly urged countries to incorporate children's

[88] Child Rights Information Network (2008). Convention on the Rights of the Child Archived 2012-11-03 at the Wayback Machine.

[89] Amnesty International USA (2007). Convention on the Rights of the Child: Frequently Asked QuestionsArchived 2008-12-22 at the Wayback Machine.

[90] "Weekly Press Conference on the Progress of the Government". Dayniile. 28 December 2014.

[91] Detrick, S. (1999). A Commentary on the United Nations Convention on the Rights of the Child. The Hague: Martinus Nijhoff.

[92] Verhellen, E. (1994). Convention on the Rights of the Child. Kessel-Lo, Belgium: Garant

[93] Van Bueren, G. (1992). The international Law on the Rights of the Child. Dordrecht: Martinus Nijhoff.

[94] Verhellen, E. (1993). "Children's rights and education." School Psychology International, 14 (3), 199-208.

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rights into the school curricula and ensure that children know and understand their rights on a systematic and comprehensive basis.[95] [,96,97]

7.0 VALUE OF CHILDREN'S HUMAN RIGHTS EDUCATION

Children's rights education in schools has value because it fulfills the obligations of countries to respect the rights of the child and implement the provisions of the Convention. But beyond the fulfillment of a legal obligation, children's rights education has value for children. Felisa Tibbitts has suggested that child rights education can be expected to affect learners in three ways.[98] First is in the providing of basic information and knowledge on the nature of rights and the specific rights that children are to enjoy. Children can be expected to have a more accurate and deeper understanding of rights. Second is in attitudes, values, and behaviors consistent with the understanding of rights. Children can be expected to have greater respect for the rights of others as shown in their attitudes and behaviors. Third is in empowering children to take action in support of the rights of others. Tibbitts refers to this as the 'transformational model' of rights education. Children here are more likely to take a stand in preventing or redressing human rights abuses. An example would be to support a victim of bullying and stand up against a bully in the school playground.

Research by Katherine Covell and R. Brian Howe[99] shows evidence of the above effects.[100,101,102] Compared to children who have not received children's rights education, children who have received children's rights education are more likely to have an accurate and adult-like understanding of rights, to understand that rights and responsibilities are related, and to display socially responsible behaviors in support of the rights of others.

CENTRAL ARGUMENT

8.0 A . EDUCATION SYSTEM IN INDIA

[95] Supra note 82

[96] United Nations Committee on the Rights of the Child (1991). General Guidelines Regarding the Form and Content of Initial Reports. CRC/C/5. New York.

[97] Hodgkin, R., and Newell, P. (1998). Implementation handbook for the Convention on the Rights of the Child.New York: UNICEF.

[98] Tibbitts, F. (1997). An Annotated Primer for Selecting Democratic and Human Rights Education Teaching Materials. Amsterdam: Open Society Institute/Human Rights education Associates.

[99] Katherine Covell and R. Brian Howe, Available at bu.

[100] Supra note 79

[101] Supra note 80

[102] Supra note 81

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The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India[103] to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009[104], which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school that satisfies certain essential norms and standards.

Article 21-A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory. 'Free education means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance, and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights-based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in Article 21A of the Constitution, following the provisions of the RTE Act. The Right to education in India has a very long history. It is not the development of a few years. The present scenario of the education and the right to education is the outcome of the struggle of our freedom fighters, philanthropist, and the great educationists who have always made sincere efforts to ensure that the compulsory education is made available to all the children and the future of the country are safe. The demand for the right to education started way back at the end of the eighteenth century. It was the period when there was no formal mechanism for providing free and compulsory education to the children but the need was always felt that the children being the most vulnerable section of the society should get the protection in the society. In the earlier period, education was treated as a mission and there was a guru-shishyaparampara prevalent in the society.[105] The pupil used to respect the teachers like God. In Ancient India, there was no formal mechanism for providing education, but the informal mechanism was prevalent. In the Ancient period, the teachers were worshiped like God. With

[103] Article 21-A of the Constitution of India
[104] Right of Children to Free and Compulsory Education (RTE) Act, 2009
[105] Naik J.P. Education Reforms in India: A Historical Review, Bombay: Orient Longman Limited (1978)

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time and with the commercialization of education the relationship between the teacher and student has also changed.[106]

8.1 THE EDUCATION SYSTEM IN PRE- INDEPENDENCE

The period during the pre-independence era reflects that there was a more developed system of informal education. The significant phenomenon was that there was no formal school education system that was in existence during this period. Higher education mechanism was absent during this period. The education was provided in the Sanskrit language and Paathshaallas were the institutions of learning.[107] There was discrimination in studies as the lower caste people were not allowed to read Vedas. The medium of instruction for Muslims was Arabic and Persian and the Madrassahs were the institutions of studies. During the pre-independence era, educational institutions were imparting religious education. The institution was not able to get a significant enrolment of the students. Therefore, a vast number of people were able to get the education in these non-formal channels of education and they also insisted to take the vocational education so that they can learn the skills for future employment.[108]

8.2 DEVELOPMENT OF MODERN EDUCATION

The development of modern education started with the Charter of 1813. This Charter has a very significant role in the growth of modern education in India. The East India Company was established in the year 1600, but the company has not initiated any educational activities for nearly 100 years of its existence. It was in the year 1698, when for the first time the company through the Charter of 1698, mandated the priests and the schools to be maintained in its garrison. Initially, the benefit was extended only to the children of the Company's European servants and not to the Indians. The later development in the area of modern education was the Charter of 1813. The attempt was made to provide elementary education and the promotion of the knowledge of science amongst the inhabitants of the British.[109]

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[106] Ibid

[107] Supra note1

[108] Nurulla S., Naik J.P. History of Education in India during the British Period, London, England: Macmillan. (1951)

[109] The East India Company Act 1813, also known as the Charter Act of 1813, was an Act of the Parliament of the United Kingdom which renewed the charter issued to the British East India Company, and continued the Company's rule in India. However, the Company's commercial monopoly was ended, except for the tea trade and the trade with China. Reflecting the growth of British power in India,

1. The Act expressly asserted the Crown's sovereignty over British India.
2. It allotted Rs 100,000 to promote education in Indian masses and allowed them to open anywhere anytime.
3. This act permitted Christian missionaries to propagate English and preach their religion.

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8.3 EFFORTS FOR UNIVERSAL COMPULSORY EDUCATION

The efforts for universal compulsory primary education started in the year 1838. The earliest attempt was made in the year 1838 by William Adam. History reveals that till the beginning of the 20th century, there were no concrete efforts made for compulsory primary education in India. Sir William Adam was a Christmas missionary who has also inquired about the state of vernacular education in Bengal, Bihar, and Orissa. He has pointed out that there is a necessity for improvement in vernacular education. He stated in his report as follows-

"The next form in which Government influence may be conceived to be employed for the promotion of education is by making it compulsory and enacting that every village should have a school. I hope the time will come when every village shall have a school, but the period has not yet arrived when this obligation can be enforced"

The next important development was the proposal by Captain Wingate in the year 1852 when Captain Wingate, The Revenue Survey Commissioner in Bombay gave his views on compulsory education.[110] The noble thought of Captain Wingate was that there must be the imposition of additional local tax on the land revenue. The additional tax must be devoted to the enhancement of education and for the construction of roads and bridges. The fund should also be utilized for the payment to the schoolmaster and for providing the proper infrastructure facility in the school.[111]

This was a highly commendable suggestion made by him, but unfortunately, it was not favored by the other officials. The common criticism was that compulsory education cannot be funded from the local fund cess only.

In the year 1858, Mr. T.C Hope the Education Inspector of Gujarat proposed that there is a need for a law to empower the inhabitants of any local area to tax themselves for the establishment of the schools.[112] He has opposed the voluntary system of school expansion and emphasized the passing of a law to authorize the levy of a compulsory educational rate. Unfortunately, the proposal of Mr. Hope was also not able to get the support of the officers. His recommendation was also found to be impractical. Later on in the year 1884, the Deputy

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The power of the provincial governments and courts in India over European British subjects was also strengthened by the Act. Financial provision was also made to encourage a revival in Indian literature and for the promotion of science.

The Company's charter had previously been renewed by the Charter Act of 1793, and was next renewed by the Charter Act of 1833.

[110] Pathannia A. and Pathania K. Primary Education and Mid Day Meal Scheme- Results, Challenges and Recommendations, New Delhi: Deep and Deep Publications Private Limited (2006)

[111] Ibid

[112] Mukherji S.N. Education in India- Today and Tomorrow, Baroda: Acharya Book Depot (1964)

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Educational Inspector of Broach, and Shri Shastri also suggested for inclusion of compulsory primary education.[113]

8.4 UNIVERSALIZATION OF ELEMENTARY EDUCATION- (THE FIRST EDUCATION COMMISSION IN INDIA)

Shri Dadabhai Naroji had taken up an effective step in initiating the efforts for free and compulsory education in India. He had a very prominent role in the movement for free and compulsory education in India.[114] Dadabhai Naroji demanded that free and compulsory education should be provided to all the children for up to four years. He has forwarded this demand before the first Indian Education Commission (Hunter Commission) constituted in the year 1882 under the Chairmanship of Sir William Hunter, a member of the Executive Council of Viceroy. This Commission was appointed by Lord Ripon, the Governor-General of India. Strong demand was raised that the local bodies elected by the people should bear the responsibility of providing elementary education to all.[115] The Hunter Commission was assigned the task of reporting on the present state of primary education in India and the need for extension and improvement in the area of primary education.

8.5 IMPACT OF GOKHALE'S RESOLUTION OF 1910

At the beginning of the twentieth-century Indian people started realizing that the country needs a nationalistic system of education based on the cultural heritage and the age-long cherished rich tradition of the Indian culture. The development started in the year 1906 when at the Calcutta Conference, Annie Besant declared that throughout the country national education should be organized. Gopal Krishna Gokhale was a nationalist leader and an active member of the Indian National Congress. He was elected as the President of the Indian National Congress in the year 1905. As a strong nationalist leader, Gokhale realized the importance of primary education for children. It has got the momentum and strength of the quite evident fact that the Maharaja Sayaji Rao Gaikwad of Baroda has made primary education free and compulsory within the territories of his state. The attempt made by Maharaja Gaikwad inspired Gokhale to start a movement for primary education.[116] In the capacity of being a member of the Legislative

[113] Ibid

[114] UNESCO towards the Universalization of Primary Education in Asia and the Pacific Country (1984)

[115] Rastogi K.G. and Sharma H.L. Universalisation of Elementary Education Broucher- V, New Delhi: NCERT(1981).

[116] Ibid

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Council Gokhale put forward the proposal for primary education. "A beginning should be made in the direction of making elementary education free and compulsory throughout the country, and that a mixed commission of officials and non-officials be appointed at an early date to frame definite proposal."

8.6 GOKHALE'S BILL OF 1911

After having an overview on the resolution of 1910, put forward by Gokhale for making primary education compulsory in our country and having the acquaintance with the reaction of the Government shown towards these resolutions the researcher will now deal with the major clauses of Gokhale's Bill of 1911.[117] Gokhale by this time was quite aware of the intention of the Government. He has further made and attempts to draw the attention of the people of India as well as that of England towards the poor state of education in India. The next remarkable development was that, on 16th March of 1911, Gokhale presented a Bill in the Legislative Council to initiate a stronger and powerful fight against the Government. The Bill, however, was more liberal and humble than the resolutions placed before and the main objective of the bill was to make primary education free and compulsory in a phased manner.[118] The Bill included all the important provisions for free and compulsory education for children. Other than that it also ensured that the attendance and quality of the education are also maintained.[119] Gokhale's Bill of the year 1911, was the first-ever attempt to introduce free and compulsory primary education in our country. It is a landmark in the history of education in India.[120] Although the researcher has pointed out that the Bill was rejected, it has drawn the attention of

[117] Ibid

[118] Ibid

[119] Compulsory primary education should be introduced in those areas where a certain percentage of boys and girls of school-age (6-10) were already receiving instructions.

- The percentage of attendance should be fixed by the Governor-General in Council.
- It should be left to the discretion of local bodies whether to apply the Act to certain areas under their jurisdiction or not.
- Local bodies should be given the right to levy educational cess to meet the cost of compulsory primary education.
- Expenditure on education was to be shared by the local bodies and Provincial Government in the ratio of 1:2.
- For the introduction of compulsion, the previous sanction of the Viceroy and the Governor respectively were necessary.
- Compulsory primary education is intended to apply in the first instance only to boys, though later on a local body may extend it to girls also.
- Guardians whose income is less than Rs. 10/- per month should not be asked to pay any fee for their wards.

[120] Supra note 8

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the whole nation to the importance and need for primary education. The Government could not entirely ignore the growing popular demand for the spread of mass education.[121] Fortunately, King George V came to India in 1912 and declared a donation of 50 lakh rupees for the development of education in India.[122] He expressed his dissatisfaction with the fact that the Bill has been rejected. Eventually, the Government had to modify the previous policy and declared a new policy with several reforms. Gokhale's Bill created a flutter in the British Parliament also. In the course of the discussion on the Indian budget, the Under Secretary of State for India admitted the need for paying more attention to Indian education.[123] The Government of India passed the resolution on educational policy on February 21, 1913. The Provincial governments formed in different states had felt the necessity of primary education.[124] In 1918, yet another development took place and Bethal Bhai Patel had for the first time raised a Bill for making primary education compulsory in the province of Bombay, and the bill passed into an Act. Similar Acts were passed in Bengal, Punjab, Uttar Pradesh, Bihar, and Orissa. Madras and Central Province passed their Acts in 1920. In the state of Assam, the Compulsory Education Act was passed in the year 1926.

Therefore, the researcher highlights that all these developments were the outcome of the sincere efforts made by Gokhale to ensure that primary education is compulsory in India. His struggle for compulsion formed an important part of the country's struggle for independence during the British Rule.

8.7 RESOLUTION OF 1913 ON EDUCATION

The Resolution of 1913 of the Government of India was an important development in the history of education in India. It was an earnest attempt made by the British Government to compensate for the demand raised for compulsory primary education by Gokhale.

Although Gokhale's bill of 1911 was rejected the Government promised to extend recurring and non-recurring grants to primary education as it could not ignore the growing popular demand for the spread of primary education.[125] The education department had declared the new policy in the form of the Government of India Resolution on February 21, 1913, covering primary, secondary, and higher women's education.[126]

[121] Ibid
[122] Ibid
[123] Ibid
[124] Supra note 31
[125] Sen J .M Primary Education Acts in India- A Study Calcutta Young Men's Christian Association (CYMCA) (1925)
[126] Ibid

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Following are the main points of the resolution-

8.8 FOR PRIMARY EDUCATION-

There should be sufficient expansion of lower primary schools, where along with instruction in the three R's children should be taught drawing, knowledge of the village map, nature study and physical exercises.[127]

Simultaneously, upper primary schools should be opened at the proper places and if necessary, lower primary schools should be raised to the status of upper primary schools.

- Local Boards schools should be established in place of private aided schools.
- Moktabs and Pathsalas should be adequately subsidised.
- The inspection and management of private schools should be made more efficient.
- In most parts of India, it may not be practicable to prescribe a separate curricula for rural and urban, but in the urban schools there is sufficient scope for teaching geography and organising school excursions etc.
- The teacher should have passed vernacular middle examination and received one years' training.
- Provision be made for refresher courses for the teachers of primary education during vacations.
- A trained teacher should get a salary not less than Rs. 12 per month.
- The number of students under one teacher should generally range between 30 and 40.
- Improvement should be made in the condition of middle and secondary vernacular schools and their number should be increased.
- Schools should be housed in sanitary, spacious but inexpensive buildings.

For Secondary education the resolution provided that-

- The state should not completely withdraw from the sphere of secondary education.
- Further establishment of state institutions was proposed to be stopped.
- Existing institutions should continue to serve as models and proper grants-in aid should be sanctioned to private institutions.
- Improvement in the mode of examination and curriculum was also recommended.

[127] Ibid

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8.9 DEVELOPMENT IN THE COMPULSORY EDUCATION DURING THE PERIOD OF 1917-27

The development after the Government of India Act, 1919 was passed, was that the control of elementary education was transferred to Indian Ministries. Due to this there was rapid expansion in the elementary education India. The period between 1917 –27 is considered as the boon for the growth of compulsory education in India. In 1917 there was no such legislation on compulsory education. Later, in the year 1918, all the State legislature began enacting the laws relating to compulsory education in their States.[128] The Montegue – Chelmsford Reforms had a great contribution in placing the portfolio of education in the hands of the Indian Ministers responsible to the legislature with large elected majority. Other than that the Non-Cooperation movement also gave momentum to the mission for compulsory education. The masses started getting awareness about their rights. The movement for compulsory education therefore got the sympathy of the people also. These socio- economic developments in the society gave force to the compulsory education. In the year 1921 the education was transferred to the Indian control and therefore, elementary education got its root in India. This was a remarkable development in the history of elementary education in India. During the period of 1931 – 1937 there was not very encouraging development in the compulsory education. The Hartog Committee[129] observed that "throughout the whole educational system, there is wastage and ineffectiveness". The introduction of the Provincial Autonomy in the year 1937 through the Government of India Act, 1935 gave more powers to Indian Ministers to act independently. The father of the nation Mahatma Gandhi also supported the movement of compulsory education in India. Gandhiji formulated the scheme of 'Basic Education' which was discussed and endorsed by the first conference of National Education held at Wardha in October 1937. It was resolved in that conference that the free and compulsory education should be provided for seven years on a nation-wide scale.

8.10 THE DEVELOPMENT IN THE COMPULSORY RIGHT TO EDUCATION POST – WAR PERIOD

Due to the continuous efforts by our political leaders the free and compulsory education was nationally accepted during the early 1940's as the responsibility of the state. The Post- war period popularly known as the Sargent Plan recommended the provision of free and compulsory education to all the children in the age group of 6- 14 years in a phased manner.

[128] Aggarwal, I. C (2005), Landmarks in the History of Modern Indian Education, Vikas Publishing House, New Delhi

[129] An Auxillary Committee of Simon Commission constituted in the year 1929

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The time period which was fixed to achieve the target was of 40 years.[130] This plan was examined by the special committee under the leadership of Sir B.G Kher the then Chief Minister of Bombay, 1950, he accepted the program of universal and compulsory education but has reduced the time of 40 years to achieve the target. It was also recommended that it should also be made the part of the Directive Principles of State Policy under the Constitution of India.[131] After this the efforts have been made by the Central Government as well as the State Government to ensure that provision of free and compulsory education for all the children through the five year plans can be achieved.[132]

8.11 UNIVERSITY EDUCATION COMMISSION, 1948

The University Education Commission was appointed under the chairmanship of Dr. Radhakrishnan in November 1948. The Commission made a number of significant recommendations on various aspects of higher education and submitted its report in August 1949. In the rapidly changing contemporary world, universities are undergoing profound changes in their scope, function and organization and are in a process of rapid evolution.[133]

Their tasks are no longer confirmed to the two traditional functions of teaching and advancement of knowledge.[134] After the transfer of power to Indian control on 15 August 1947, great changes had taken place in the political and economic conditions of Indian society. The academic problem has also assumed new shapes. Similarly the conception of the duties and responsibilities of the universities have become wider and they have to provide leadership in politics, administration, profession, industry and commerce.[135] They have to meet the increasing demand for every type of higher education, literary, scientific, technical and professional. By the application and development of technical and scientific knowledge, the country will enable to attain freedom from want, disease and ignorance.[136]

[130] Ghosh S.C. (2013), The History of Education in Modern India, 1757-2012. New Delhi: Orient Black Swan Private Limited
[131] Ibid
[132] Ibid
[133] Ibid
[134] Ibid
[135] Ibid
[136] Ibid

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8.12 COUNCIL FOR THE ELEMENTARY EDUCATION

In order to fulfill the directive of Article 45 of the Indian Constitution, the Government of India decided to constitute the All- India Council of Elementary Education.[137] The Council was assigned the task of providing the advice to the Union and the State Government and the local bodies in the matters relating to the elementary education. The Council had to examine the proposals referred to it by the Union and the State Governments and also it had to initiate the proposals for the development of the elementary education.[138]

8.13 KOTHARI COMMISSION, 1964

The Kothari Commission was constituted in the year 1964 to examine the progress of elementary education. This was the first commission appointed after Independence for the purpose of examining the progress of elementary education. The commission reported that Common School System of the public education based on the neighbourhood school to fulfil the demand for free and universal education of the people must be there. The commission also recommended that the target fixed for the attainment of the free and compulsory education was to be achieved by the year 1960, but due to the difficulties relating to the lack of resources, increase in population, the poverty and the illiteracy of the parents of the children belonging to the backward classes the target could not be achieved. It was not possible of the government to make effective progress in achieving the target. The Commission recommended that there is a need to fix a new deadline for the fulfillment of the objective. The commission was of the view that there is a need of preparing the concrete program of action for the purpose of achieving this target of elementary education for the children and it should be highest priority.[139] The democratic set up of the country demands that the social justice is to be guaranteed to every citizen. The Commission gave the following suggestions-

"Strenuous efforts should be made for the early fulfillment of the Directive Principle under Article 45 of the Constitution seeking to provide free and compulsory education for all children up to the age of 14. Suitable programs should be developed to reduce the prevailing wastage and stagnation in schools and to ensure that every child who is enrolled in school successfully completes the prescribed course.

(a) Of all factors which determine the quality of education and its contribution to national development, the teacher is undoubtedly the most important. It is on his personal qualities and

[137] Chauhan C.P.S (2004), Modern Indian Education – Policies, Progress and Problems, New Delhi, Kanishka Publishers, Distributors

[138] Ibid

[139] Supra note 53

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character, his educational qualifications and professional competence that the success of all educational endeavor must ultimately depend. Teachers must, therefore, be accorded an honored place in society. Their emoluments and other service conditions should be adequate and satisfactory, having regard to their qualifications and responsibilities.

(b) The academic freedom of teachers to pursue and publish independent studies and researches and to speak and write about significant national and international issues should be protected.

(c) Teacher education, particularly in-service education, should receive due emphasis"

Therefore, the Kothari Commission had played an important role in effective implementation of the Directive Principle of State Policy on elementary education. The main recommendation of the Commission was that the free and compulsory quality education must be guaranteed to the children upto the age of 14 Years.

8.14 FORMATION OF FIRST NATIONAL POLICY ON EDUCATION

The National Policy on Education is a policy formulated by the Government of India to promote education amongst the people of India. The policy has the coverage of elementary education to colleges in both rural and urban India. The first National Policy on Education was formed in the year 1968 by the former Prime Minister late Smt. Indira Gandhi, and the second by former Prime Minister late Shri Rajiv Gandhi in 1986.[140] This was the beginning of the realization of the dream of free and compulsory education in India.

Based on the report and recommendations of the Education Commission (1964–1966), the government of Prime Minister Indira Gandhi announced the first National Policy on Education in 1968, which called for a "radical restructuring" and equalize educational opportunities in order to achieve national integration and greater cultural and economic development.[141] The policy called for fulfilling compulsory education for all children up to the age of 14, as stipulated by the Constitution of India, and the better training and qualification of teachers.[142] The policy called for focus on learning of regional languages, outlining the "three language formula" to be implemented in secondary education - the instruction of the English language, the official language of the state where the school was based, and Hindi. Language education was seen as essential to reduce the gulf between the intelligentsia and the masses. Although the decision to adopt Hindi as the national language had proven controversial, the policy called for

[140] National Policy on Education, 2019, HRD Ministry, Government of India

[141] Ibid

[142] Ibid

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use and learning of Hindi to be encouraged uniformly to promote a common language for all Indians.[143] The policy also encouraged the teaching of the ancient Sanskrit language, which was considered an essential part of India's culture and heritage.

The National Policy on Education of 1968 called for education spending to increase to six percent of the national income.[144]

8.15 SECOND NATIONAL EDUCATION POLICY (1986 RENEWED IN 1992)

The National Policy on Education is an extensive document that covers all aspects of education from elementary to university level and even adult education. The 1986 Education Policy was renewed in the year 1992.[145] The policy directly deals with children between the age group of 0-18. The 1992 revised National Policy on Education states "that the aim of education is to keep intact India's long accepted values of secularism, socialism, democracy and professional ethics. Education is efforts to develop a common school system through 10+2+3 structure.[146] The policy accepts the +2 as part of school education. With the Constitutional Amendment of 1976, education has been placed on the concurrent list, which gives the central government a bigger role in the implementation of education.[147]

In an attempt to remove inequalities in the education system, the policy emphasizes the importance of special programmes for marginalized groups as such women, Schedule Tribes (STs), Schedule Castes (SCs), handicapped, etc. Some of the provisions for SCs listed are incentive to families, pre-matric scholarships, constant micro planning to ensure enrolment, retention and successful completion of SC students, recruitment of SC teachers, hostel provisions for SC students and appropriate location of school building to facilitate participation of SCs. Similar provisions are made for STs including use of youth teachers and use of tribal languages at initial stages.[148]

The Policy identifies the need to pay attention to minority groups and other backward sections of society.[149] Hill, desert and remote areas will be provided with adequate institutional infrastructure. The policy encourages the integration on handicapped student in the main stream

[143] Ibid
[144] Ibid
[145] National Policy on Education, 1986, HRD Ministry, Government of India
[146] National Policy for Children, 1974, Ministry of Women and Child Development, Government of India
[147] Ibid
[148] Supra note 62
[149] Ibid

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system but also makes provisions for special schools with hostels if need be. Teachers will also be trained to deal with special difficulties of handicapped children.[150]

Recognizing the impact of early years to the development of a child the policy makes room for early childhood care and education through the Integrated Child Development Services programme.

With regard to elementary education the policy makes three very important commitments:

1. Universal access and enrolment.

2. Universal retention of children up to age 14.

3. A much needed improvement in the quality of education that allows for children to achieve a certain level of learning.

The Policy also highlights that the education will adopt a child-centred approach, hence the education should cater on an individual level to the needs of the child. This education policy has strictly excluded the corporal punishment from the teaching system. As per Operation Blackboard there should be one teacher per class, and all necessary equipment and teaching materials should be provided for by the programme.[151]

Non-formal Education (NFE) system of centres and facilities will be broadened. It will be brought up to the level of formal education facilities with specially trained teachers from the community so that children passing out of NFE can enter the formal system. Curriculum in schools with be guides by both national core as well as needs in the local environment.

According to the Policy the highest priority will be placed on solving the problem of dropouts, and ensuring retention at the school level. This effort will be supplemented by NFE. The policy states "it shall be ensured that free and compulsory education of satisfactory quality is provided to all children up to 14 years of age before we enter the twenty-first century".

In order to enhance the quality higher education, boards of secondary education will be granted autonomy. The policy introduced generic vocational courses in higher education to enhance individual employability and meet the manpower need of India's growing economy. Children who have "special talent" have been given the opportunities to enhance their aptitude through Narvodaya Vidyalayas.

In order to make the education system work the policy outlines four necessary steps:

1. Giving the teachers a better deal and more accountability.[152]

[150] Ibid

[151] Ibid

[152] Ibid

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2. Improved student services and adherence to certain norms of behaviour.[153]

3. Better facilities for instruction.[154]

4. Setting standards for performance evaluation at the national and state level.[155]

According to the policy education must be culturally applicable and inculcate values in the children and hence society. There is need to develop the use of local languages in education. There is a need for low prices books and improvement in library management as well as additional libraries. There are provisions in the policy for work experience as a part of education, population education, using math as a tool to teach analytical thinking, strengthen science education, and support sports, physical education and yoga. The policy called for greater participation of educated youth and revision of the evaluation system so that it does not simple reflects rote learning. It emphasises the importance of teacher training, and continual teacher education. The policy devotes an entire section to overhauling the planning and management system surrounding education at national, state, district and local levels. It outlines that it is both the government and the communities responsibility for providing funds and that inadequate or non-investment is a major problem facing education. Like the policies before it emphasizes a need to raise expenditure to six percent of the Gross Domestic Product (GDP) in the Eight Five Year Plan.

8.16 SIGNIFICANT CONSTITUTIONAL AMENDMENTS

In order to give boost to the elementary education in India there were some significant constitutional amendments. Before the Constitutional 42nd Amendment the education was in the state list, it was largely the responsibility of the state. After this amendment the education was brought in the Concurrent List and elementary education was made the responsibility of both the Centre and the state government. There was 73rd and 74th Constitutional Amendment Acts which were enacted in the year 1992 created a paradigm shift in the governance models by invoking decentralization paved way to give the opportunity to the local communities and the institutions in the monitoring of the government programs on education. Amongst the other subjects identified by the 73rd amendment which were required to be transferred to the Panchayats were the education including both primary and secondary education, adult and non-formal education vocational and the technical education. This amendment has established the

[153] Ibid

[154] Ibid

[155] Ibid

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three –tier Panchayat Raj system in the country with elected bodies at the gram, taluka and at zila level to allow the community to actively participate in the developmental program.[156]

8.17 THE 83RD CONSTITUTIONAL (AMENDMENT) BILL 1997

The Constitution of India (Eighty- Third Amendment) Bill 1997 proposed many important amendments for the free and compulsory educationThe Bill proposed of inserting Article 21-A ensuring the free and compulsory education to all the citizens of the age of six to fourteen years.

21-A: "The State shall provide free and compulsory education to all citizens of the age six to fourteen years. The right to free and compulsory education referred to in clause (1) shall be enforced in such manner as the State may, by law, determine.

The State shall not make any law, for free and compulsory education under clause (2), in relation to the educational institutions not maintained by the State or not receiving aid out of State funds."

The Amendment Act also proposed the amendment in the Article 35 of the Constitution. It proposed-

Article 35 of the Constitution shall be renumbered as clause (1) of that article and after clause (1) as so renumbered and before the Explanation, the following clause shall be inserted, namely:-

"(2) The competent legislature shall make the law for the enforcement of right to free and compulsory education referred to in clause (1) of article 21A within one year from the commencement of the Constitution (Eighty-third Amendment) Act, 1997:

Provided that a provision of any law to free, and compulsory education in force in a State immediately before the commencement of the Constitution (Eighty-third Amendment) Act, 1997 which is inconsistent of article 21A, shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier"

The another amendment proposed was that Article 45 of the Constitution shall be omitted.

In Article 51A of the Constitution, after clause (j) the following clause will be added, namely:-

[156] Awasthi S.K. and Kataria R.P. (2000), Law Relating to Protection of Human Rights: Containing Commentary on the Protection of Human Rights Act, 1993 with Rules, Regulations, Allied Laws, International Covenants, Constitutional Provisions and various other useful Appendices, Millennium Edition Reprint 2002, Orient Publishing Company New Delhi Allahabad

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"(k) to provide opportunities for education to a child between the age of six and fourteen years of whom such citizen is a parent or guardian."

8.18 THE CONSTITUTION (86TH AMENDMENT) ACT, 2002)

Consequent to the Unnikrishnan judgment and a public demand to enforce the right to education, successive governments from 1993 worked towards bringing a Constitutional Amendment to make education a fundamental right.[157] This led to the 86th amendment in December 2002 which inserted the following articles in the Constitution:

1. Insertion of new article 21A- After article 21 of the Constitution,

"21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

2. Substitution of new article for article 45- For article 45 of the Constitution, the following article shall be substituted, namely:-

"Provision for early childhood care and education to children below the age of six years."

"45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

3. Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-

"(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

8.19 A JOURNEY OF FREE AND COMPULSORY EDUCATION

In October 2003, the first draft of the Free and Compulsory Education for Children Bill, 2003 was sent by the NDA Government inviting comments and suggestions from the public.

The Bill began with the words – "A Bill to provide for free and compulsory education for all children from the age of six years to fourteen years and for matter connected therewith and incidental thereto. BE it enacted by Parliament in the Fifty fourth Year of the Republic of India".

In 2004 a revised version of this Bill, re-titled the Free and Compulsory Education for Children Bill 2004, was re-posted. The Free and Compulsory Education Bill, 2004 began with the words – "To provide free and compulsory education to all children from the age of six to fourteen

[157] 86th amendment to Articles 21A, 45 and 51A to the Indian Constitution (2002)

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years and for matters connected therewith and incidental thereto; BE it enacted by Parliament in the Fifty fifth Year of the Republic of India".

Later on, the Government of India had re-constituted the Central Advisory Board of Education (CABE) Vide Resolution dated 6th July, 2004.[158] The board was assigned the following task -

(a) To suggest a draft of legislation envisaged in Article 21-A of the Constitution,[159]

(b) To examine other issues related to elementary education for achieving the objective of free and compulsory basic education."

Based on the following principles, CABE formulated the draft of the essential provisions of "Right to Education Bill, 2005":

1) Right to Education should imply that every child has a right to be (a) provided full-time education of satisfactory and equitable quality in a formal school which satisfies at least certain essential norms, and (b) enabled to complete elementary education.[160]

2) Right to Education also implies that it is the State's obligation to remove whatever obstacles – social, economic, academic, linguistic, cultural, physical, etc. – prevent children from effectively participating in and completing elementary education of satisfactory quality.[161]

3) Right to Education must be seen not merely as a right for its own or the individual child's sake, but also as an instrument of promoting other constitutional objectives, e.g. equality, justice, democracy, secularism, social cohesion, etc.[162]

4) Provision of Free and Compulsory Education of satisfactory quality to children from weaker sections is the responsibility not merely of Schools run or supported by the State, but also of Schools which are not dependent on State funds. Schools of the latter kind also need to provide education to such children at least to the extent of 25% of their intake.[163]

5) One major reason why it has not been possible to universalize elementary education all these years is the dysfunctionality of the delivery system. The Committee has therefore attempted to formulate a number of provisions for the proposed legislation, essentially aimed at greater decentralization and accountability, so that the delivery system is able to rise to the challenge.[164]

[158] Universalisation of Secondary Education, Report of CABE Committee, Ministry of Human Resource Development, Government of India

[159] Ibid

[160] Ibid

[161] Ibid

[162] Ibid

[163] Supra note 86

[164] Ibid

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6) Although its terms of reference were confined to free and compulsory education for children between the ages of 6-14 years, the Committee has considered the main programme for Early Childhood Care and Education (ECCE), viz., Integrated Child Development Services (ICDS), and proposed convergence to the extent possible.

In 2005 (June), the Right to Education Bill, 2005 as drafted by Central Advisory Board of Education (CABE) was introduced to give effect to the Constitution (86th) Amendment Act, 2002.

Even the draft Right to Education Bill, 2005 was circulated to States in August 2005 and comments were received on it from 16 States. But, opposition was raised due to this mandatory provision to provide 25% reservation of disadvantaged group in private schools. Indian Law Commission initially proposed 50% reservation of seats. However, the CABE Sub-Committee held this provision as a significant prerequisite for creating a democratic egalitarian society.

8.20 THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION BILL, 2008

The Right of Children to Free and Compulsory Education Bill, 2008 was proposed to provide every child of the age of six to fourteen years with the right to free and compulsory education in a neighbourhood school until completion of elementary education. Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age. The Bill was introduced in the Rajya Sabha on December 15, 2008 and was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi). The Bill was passed in the Rajya Sabha on 20th July 2009 and in the Lok Sabha on 4th August 2009. It had come into force on 1st April 2010.

8.21 MAJOR AMENDMENTS IN THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Later on there was an amendment in the year 2012 as a consequence of the Supreme Court verdict in Society for Un-aided Private School Rajasthan vs. U.O.I[165] the Supreme Court upholds the validity of the RTE Act and makes it clear that the Act would be implemented across the country. The court, however, exempted private unaided minority schools (such as

[165] (2012) 6 SCC 1

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schools run by religious institutions) from the Act stating that it would "infringe upon the fundamental freedom" of such schools.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 was amended in 2012 and the RTE Amendment Act came into force with effect from 1 August 2012. The Amendment Act inter alia provides for: "(i) inclusion of children with disability as contained in the Persons with Disabilities Act 2005 and the National Trust Act under the purview of RTE Act and providing them free and compulsory education, and providing option for home-based education for children with severe disability; (ii) protection of the rights of minorities provided under Article 29 and 30 of the Constitution while implementing the RTE Act; (iii) exemption of Madrasas, Vedic Pathsalas and educational institutions imparting religious instruction from the provisions of the RTE Act."

The latest amendment in the The Right of Children to Free and Compulsory Education Act was through the passing of The Right of Children to Free and Compulsory Education (Amendment) Bill, 2017 which was passed by the Rajya Sabha by voice vote. The Lok Sabha had passed it on July 22 2017. According to the existing Act which came into effect from 1 April, 2010, these teachers were to acquire minimum qualifications within five years by 31 March, 2015.[166] According to the amendment bill, every teacher appointed or in position as on March 2015 is now required to acquire the minimum qualifications by 2019. The amendment will help teachers save their jobs. When the RTE Act was implemented in 2010, new schools were set up but qualified teachers were not available and unqualified teachers, including those with graduation degrees, were recruited, according to the government.

8.22 THE DRAFT OF THE NATIONAL EDUCATION POLICY 2019

The Committee for Draft National Education Policy (Chair: Dr. K. Kasturirangan) submitted its report on May 31, 2019. The Committee was constituted by the Ministry of Human Resource

[166] Section 23, Qualifications for appointment and terms and conditions of service of teachers
(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher.
(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:
PROVIDED that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

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Development in June 2017. The report proposes an education policy, which seeks to address the challenges of: (i) access, (ii) equity, (iii) quality, (iv) affordability, and (v) accountability faced by the current education system.

The draft Policy provides for reforms at all levels of education from school to higher education. It seeks to increase the focus on early childhood care, reform the current exam system, strengthen teacher training, and restructure the education regulatory framework. It also seeks to set up a National Education Commission, increase public investment in education, strengthen the use of technology and increase focus on vocational and adult education, among others. Key observations and recommendations of the draft Policy include:

9.0 SCHOOL EDUCATION

9.1 EARLY CHILDHOOD CARE AND EDUCATION

- In addition to problems of access, the Committee observed several quality related deficiencies in the existing early childhood learning programmes. These include: (i) curriculum that doesn't meet the developmental needs of children, (ii) lack of qualified and trained teachers, and (iii) substandard pedagogy. Currently, most early childhood education is delivered through anganwadis and private-preschools. However, there has been less focus on the educational aspects of early childhood. Hence, the draft Policy recommends developing a two-part curriculum for early childhood care and education. This will consist of: (i) guidelines for up to three-year-old children (for parents and teachers), and (ii) educational framework for three to eight-year-old children. This would be implemented by improving and expanding the anganwadi system and co-locating anganwadis with primary schools.

9.2 THE RIGHT TO EDUCATION ACT, 2009 (RTE ACT)

- Currently, the RTE Act provides for free and compulsory education to all children from the age of six to 14 years. The draft Policy recommends extending the ambit of the RTE Act to include early childhood education and secondary school education. This would extend the coverage of the Act to all children between the ages of three to 18 years.
- In addition, the draft Policy recommends that the recent amendments to the RTE Act on continuous and comprehensive evaluation and the no detention policy must be reviewed. It states that there should be no detention of children till class eight. Instead, schools must ensure that children are achieving age-appropriate learning levels.

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9.3 CURRICULUM FRAMEWORK

- The current structure of school education must be restructured on the basis of the development needs of students. This would consist of a 5-3-3-4 design comprising: (i) five years of foundational stage (three years of pre-primary school and classes one and two), (ii) three years of preparatory stage (classes three to five), (iii) three years of middle stage (classes six to eight), and (iv) four years of secondary stage (classes nine to 12).
- The Committee noted that the current education system solely focuses on rote learning of facts and procedures. Hence, it recommends that the curriculum load in each subject should be reduced to its essential core content. This would make space for holistic, discussion and analysis-based learning.

9.4 SCHOOL EXAM REFORMS

- The Committee noted that the current board examinations: (i) force students to concentrate only on a few subjects, (ii) do not test learning in a formative manner, and (iii) cause stress among students. To track students' progress throughout their school experience, the draft Policy proposes State Census Examinations in classes three, five and eight. Further, it recommends restructuring the board examinations to test only core concepts, skills and higher order capacities. These board examinations will be on a range of subjects. The students can choose their subjects, and the semester when they want to take these board exams. The in-school final examinations may be replaced by these board examinations.

9.5 SCHOOL INFRASTRUCTURE

- The Committee noted that establishing primary schools in every habitation across the country has helped increase access to education. However, it has led to the development of very small schools (having low number of students). The small size of schools makes it operationally complex to deploy teachers and critical physical resources. Therefore, the draft Policy recommends that multiple public schools should be brought together to form a school complex. A complex will consist of one secondary school (classes nine to twelve) and all the public schools in its neighbourhood that offer education from pre-primary till class eight.
- The school complexes will also include anganwadis, vocational education facilities, and an adult education centre. Each school complex will be a semi-autonomous unit providing integrated education across all stages from early childhood to secondary

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education. This will ensure that resources such as infrastructure and trained teachers can be efficiently shared across a school complex.

9.6 TEACHER MANAGEMENT

- The Committee noted that there has been a steep rise in teacher shortage, lack of professionally qualified teachers, and deployment of teachers for non-educational purposes. The draft Policy recommends that teachers should be deployed with a particular school complex for at least five to seven years. Further, teachers will not be allowed to participate in any non-teaching activities (such as cooking mid-day meals or participating in vaccination campaigns) during school hours that could affect their teaching capacities.
- For teacher training, the existing B.Ed. programme will be replaced by a four-year integrated B.Ed. programme that combines high-quality content, pedagogy, and practical training. An integrated continuous professional development will also be developed for all subjects. Teachers will be required to complete a minimum of 50 hours of continuous professional development training every year.

9.7 REGULATION OF SCHOOLS

- The draft Policy recommends separating the regulation of schools from aspects such as policymaking, school operations, and academic development. It suggests creating an independent State School Regulatory Authority for each state that will prescribe basic uniform standards for public and private schools. The Department of Education of the State will formulate policy and conduct monitoring and supervision.Higher Education

9.8 REGULATORY STRUCTURE AND ACCREDITATION:

- The Committee noted that the current higher education system has multiple regulators with overlapping mandates. This reduces the autonomy of higher educational institutions and creates an environment of dependency and centralised decision making. Therefore, it proposes setting up the National Higher Education Regulatory Authority (NHERA). This independent authority would replace the existing individual regulators in higher education, including professional and vocational education. This implies that the role of all professional councils such as AICTE and the Bar Council of India would be limited to setting standards for professional practice. The role of the

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University Grants Commission (UGC) will be limited to providing grants to higher educational institutions.

- Currently, the National Assessment and Accreditation Council (NAAC) is an accreditation body under the UGC. The draft Policy recommends separating NAAC from the UGC into an independent and autonomous body. In its new role, NAAC will function as the top level accreditor, and will issue licenses to different accreditation institutions, who will assess higher educational institutions once every five to seven years. All existing higher education institutions should be accredited by 2030.

9.9 ESTABLISHMENT OF NEW HIGHER EDUCATIONAL INSTITUTIONS:

- Currently, higher educational institutions can only be set up by Parliament or state legislatures. The draft Policy proposes that these institutions could be allowed to be set up through a Higher Education Institution Charter from NHERA. This Charter will be awarded on the basis of transparent assessment of certain specified criteria. All such newly constituted higher educational institutions must receive accreditation as mandated by NHERA within five years of being established.

9.10 RESTRUCTURING OF HIGHER EDUCATION INSTITUTIONS:

- Higher education institutions will be restructured into three types: (i) research universities focusing equally on research and teaching; (ii) teaching universities focusing primarily on teaching; and (iii) colleges focusing only on teaching at undergraduate levels. All such institutions will gradually move towards full autonomy - academic, administrative, and financial.

9.11 ESTABLISHING A NATIONAL RESEARCH FOUNDATION:

- The Committee observed that the total investment on research and innovation in India has declined from 0.84% of GDP in 2008 to 0.69% in 2014. India also lags behind many nations in number of researchers (per lakh population), patents and publications.
- The draft Policy recommends establishing a National Research Foundation, an autonomous body, for funding, mentoring and building the capacity for quality research in India. The Foundation will consist of four major divisions: sciences, technology, social sciences, and arts and humanities, with the provision to add additional

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divisions. The Foundation will be provided with an annual grant of Rs 20,000 crore (0.1% of GDP).

9.12 MOVING TOWARDS A LIBERAL APPROACH:

- The draft Policy recommends making undergraduate programmes interdisciplinary by redesigning their curriculum to include: (a) a common core curriculum and (b) one/two area(s) of specialisation. Students will be required to choose an area of specialisation as 'major', and an optional area as 'minor'. Four-year undergraduate programmes in Liberal Arts will be introduced and multiple exit options with appropriate certification will be made available to students. Further, within the next five years, five Indian Institute of Liberal Arts must be setup as model multidisciplinary liberal arts institutions.

9.13 EDUCATION GOVERNANCE

- The Committee observed that there is a need to revisit the existing system of governance in education, and bring in synergy and coordination among the different ministries, departments and agencies. In this context, it recommends:
- Creation of a National Education Commission or Rashtriya Shiksha Aayog, as an apex body for education, to be headed by the Prime Minister. This body will be responsible for developing, implementing, evaluating, and revising the vision of education in the country on a continuous and sustained basis. It will oversee the implementation and functioning of several bodies including the National Council of Educational Research and Training (NCERT), the proposed National Higher Education Regulatory Authority, and National Research Foundation.
- The Ministry of Human Resources and Development must be renamed as the Ministry of Education in order to bring focus back on education.

9.14 FINANCING EDUCATION

- The Draft Policy reaffirmed the commitment of spending 6% of GDP as public investment in education. Note that the first National Education Policy (NEP) 1968 had recommended public expenditure in education must be 6% of GDP, which was reiterated by the second NEP in 1986. In 2017-18, public expenditure on education in India was 2.7% of GDP.

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- The draft Policy seeks to double the public investment in education from the current 10% of total public expenditure to 20% in the next 10 years. Of the additional 10% expenditure, 5% will be utilized for universities and colleges (higher education), 2% will be utilized for additional teacher costs or resources in school education and 1.4% will be utilized for early childhood care and education.
- The Committee also observed operational problems and leakages in disbursement of funds. For instance, it observed that District Institutes of Education and Training have about 45% vacancies which have led to their allocations not being used or being used ineffectively. It recommends optimal and timely utilization of funds through the institutional development plans.

9.15 TECHNOLOGY IN EDUCATION

- The Committee observed that technology plays an important role in: (a) improving the classroom process of teaching, learning and evaluation, (b) aiding in preparation of teachers and continuous professional development of teachers, (c) improving access to education in remote areas and for disadvantaged groups, and (d) improving the overall planning, administration and management of the entire education system. It recommends focused electrification of all educational institutions as electricity is a pre-requisite for all technology-based interventions. Further, it recommends:

NATIONAL MISSION ON EDUCATION THROUGH INFORMATION AND COMMUNICATION TECHNOLOGY:

- The Mission will encompass virtual laboratories that provide remote access to laboratories in various disciplines. A National Education Technology Forum will also be setup under the Mission, as an autonomous body, to facilitate decision making on the induction, deployment and use of technology. This Forum will provide evidence-based advice to central and state-governments on technology-based interventions.

9.16 NATIONAL REPOSITORY ON EDUCATIONAL DATA:

- A National Repository will be setup to maintain all records related to institutions, teachers, and students in digital form. Further, a single online digital repository will be created where copyright-free educational resources will be made available in multiple languages.

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9.17 VOCATIONAL EDUCATION

- The Committee observed that less than 5% of the workforce in the age-group of 19-24 receives vocational education in India. This is in contrast to 52% in the USA, 75% in Germany and 96% in South Korea. It recommends integrating vocational educational programmes in all educational institutions (schools, colleges and universities) in a phased manner over a period of 10 years. Note that this is an upward revision from the National Policy on Skills Development and Entrepreneurship (2015) which aimed at offering vocational education in 25% of educational institutions. Key recommendations in this regard include:

9.18 VOCATIONAL COURSES:

- All school students must receive vocational education in at least one vocation in grades nine to 12. The proposed school complexes must build expertise in curriculum delivery that is aligned to the competency levels under the existing National Skills Qualifications Framework.
- The proposed Higher Education Institutions must also offer vocational courses that are integrated into the undergraduate education programmes. The draft Policy targets to offer vocational education to up to 50% of the total enrolment in higher education institutions by 2025, up from the present level of enrolment of well below 10% in these institutions.

9.19 NATIONAL COMMITTEE FOR THE INTEGRATION OF VOCATIONAL EDUCATION

- The Committee will be set up to work out the steps that need to be taken towards achieving the above goals. A separate fund will be setup for the integration of vocational education into educational institutions. The Committee will work out the modalities for the disbursement of these funds.

10.0 ADULT EDUCATION

- As per Census 2011, India still had over 3.26 crore youth non-literates (15-24 years of age) and a total of 26.5 crore adult non-literates (15 years and above). In this regard, the draft Policy recommends:
- Establishing an autonomous Central Institute of Adult Education, as a constituent unit of NCERT, which will develop a National Curriculum Framework for adult education? The Framework will cover five broad areas: foundational literacy and numeracy, critical life skills vocational skills development, basic education, and continuing education.

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- Adult Education Centres will be included within the proposed school complexes. Relevant courses for youth and adults will be made available at the National Institute of Open Schooling. A cadre of adult education instructors and managers, as well as a team of one-on-one tutors, will be created through a newly-established National Adult Tutors Programme.

10.1 EDUCATION AND INDIAN LANGUAGES

- The Committee observed that a large number of students are falling behind since classes in schools are being conducted in a language that they do not understand. Therefore, it is recommended that the medium of instruction must either be the home language/mother-tongue/local language till grade five and preferable till grade eight, wherever possible.[167]
- Introduced by the first National Education Policy, the three-language formula stated that state governments should adopt and implement the study of a modern Indian language, preferably one of the southern languages, apart from Hindi and English in the Hindi-speaking states, and Hindi along with the regional language and English in the non-Hindi speaking states. The draft Policy recommended that this three-language formula be continued and flexibility in the implementation of the formula should be provided.
- The Committee remarked that the implementation of the formula needs to be strengthened, particularly in Hindi-speaking states. Further, schools in Hindi-speaking areas should also teach Indian languages from other parts of India for national integration. To provide flexibility in the choice of language, students who wish to change one or more of their three languages may do so in grade six or grade seven, subjected to the condition that they are still able to demonstrate proficiency in three languages in their modular board examinations.
- To promote Indian languages, a National Institute for Pali, Persian, and Prakrit will be set up. All higher education institutes must recruit high-quality faculty for at least three Indian languages, in addition to the local Indian language. Further, the mandate of the

[167] Nayak A.K. and Rao V.K. (2009), Primary Education, APH Publishing Corporation, First Edition, ISBN 10: 8176483656 / ISBN 13: 9788176483650

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Commission for Scientific and Technical Terminology will be expanded to include all fields and disciplines to strengthen vocabulary in Indian languages.[168]

11.0 CONCLUSION

The Universal Declaration of Human Rights is seen as a basis for all international legal standards for children's rights today. There are several conventions and laws that address children's rights around the world. Fully developed children's rights education means that all members of the school community receive education on the rights of the child. This chapter regards children as bearers of human rights, that children are citizens in their own right, that schools and educational institutions are learning communities where children learn (or fail to learn) the values and practices of human rights and citizenship, and that educating children about their own basic human rights is a legal obligation of the United Nations Convention on the Rights of the Child.

Education is a key component of human development which is an essential tool for country's growth. Education is recognized as a purposeful commitment on the part of every state, ensuring innovative, low cost and effective education even under conditions of great scarcity and daunting poverty. Education has been accepted as a fundamental right of every child. It is needed both as an end in itself to enable people to lead a cultured and more satisfying life as well as a means for developing human capabilities for earning higher income. The incremental process of educational achievements intensively impacts upon other indicators of human development like birth, death, infant mortality and literacy rate. Education plays one of the most important roles in the process of socialization which cause better acculturation and internalization of norms. The quality of education plays a major role in imparting knowledge that is unbiased, relevant as well as capable of making the recipient lead a successful life despite formidable odds in today's competitive world.

The Right to Education has been enshrined in a range of International Conventions. The establishment of United Nations in 1945 and its emphasis on human rights ushered in new opportunities to address the Right to Education to every child of the world. The United Nations, through its various Declarations, Covenants, Conventions and Resolutions have been instrumental in bringing attention to equal Right to Education around the globe. The Universal Declaration of Human Rights (UDHR, 1948), International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention Against Discrimination in Education (1962), Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW,

[168] Government of India, Ministry of Human Resource Development, National Education policy 2019

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1979) and the more recently, The Convention on the Rights of the Child (CRC, 1989) have given a long way in impressing member nations of the urgent need of social and economic justice to children by making their rights to quality education accessible to them on equal basis. While the United Nations can be considered as a pioneer in bringing attention to Right to Education around the world, it cannot guarantee action which rest alone with the respective Governments of its Sovereign Member States.

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